IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 227 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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INAYAT ALI MOHD. SHARIF SAIYED

Versus

STATE OF GUJARAT

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Appearance:

MR EE SAIYED for Petitioner

MR BY MANKAD, APP for Respondent No. 1

MR VD PARGHI for Respondent No. 2, 3, 4, 5

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CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 20/11/2000

ORAL JUDGEMENT

Rule. Service of rule is waived by Shri B.Y.Mankad, learned APP for the Revision-Opponent No.1 and Shri V.D.Parghi, learned advocate for Revision-Opponents No.2 to 5.

2. The original complainant of Crime Registration No.M. Case No.21/99 of Bhuj City Police Station has, by filing this application under Sec.397 of the Criminal Procedure Code, 1973, (In short `Cr.P.C.') challenged the legality, correctness and propriety of order dated 25th May, 2000, passed below Police Report under Sec.173 of Cr.P.C. seeking issuance of `C' Summary, by the learned Magistrate.

3. Here in this application, the petitioner was the complainant while the revision-opponents No.2 to 5 were accused in that M.Case No.21/99 registered in Bhuj City Police Station and, therefore, parties will be referred to hereinafter as the complainant and accused respectively at appropriate places.

4. The complainant lodged his private complaint in the Court of learned Chief Judicial Magistrate, Kutch at Bhuj (who will be referred to hereinafter as `the learned Magistrate' for the sake of brevity) for the offences punishable under Secs.120(b), 306, 114 of IPC. That complaint was sent to Police Inspector of Bhuj City Police Station for investigation under Sec.156(3) of Cr.P.C. On receipt of that order alongwith copy of complaint the case was registered in Bhuj City Police Station as M.Case No.21/99. The Investigating Officer carried out the investigation and ultimately on or about 4.1.2000 submitted his final report under Sec.173 Cr.P.C. and requested the Court of learned Magistrate to grant `C' Summary. The learned Magistrate after perusal of the record and the materials collected by the Investigating Officer, ultimately passed an order on 25th May, 2000, granting `C' Summary. Being aggrieved against the said order of granting `C' Summary, the original complainant has preferred this application.

5. When this Criminal Revision Application was taken up for final hearing, the learned advocates for both the parties jointly submitted that this application be disposed of, without entering into merits of the case, by giving suitable directions to the learned Magistrate. They also jointly submitted that this Court may not give reasons in its judgment while passing the final order.

6. Having heard the learned advocates for both the parties and on going through the impugned order which is challenged in this Criminal Revision Application and on considering the grounds stated in memo of this Revision, this Court is of the view that the learned Magistrate has appreciated the evidence collected by the Investigating

Officer which he ought not to have done because at the time of taking cognizance the learned Magistrate is only required to be prima facie satisfied whether there are sufficient grounds for proceeding against the accused. Here in this case the learned Magistrate has taken into consideration a dying declaration and appreciated the evidence as if he tried the case and ultimately gave findings with regard to innocence of the accused. In view of this, the order challenged in this application is set aside by giving suitable directions to the learned Magistrate.

(1) The learned Sessions Judge, Kutch at Bhuj is directed to withdraw the Criminal Case No.72/99, which is relating to M.Case No.21/99 of Bhuj City Police Station, which was pending on the file of the learned Chief Judicial Magistrate, Bhuj at Kutch, from that Court and transfer the same to a Magistrate other than the learned Magistrate who passed the order.

(2) The learned Magistrate to whom the aforesaid case would be assigned will afford full opportunity of being heard to both the parties including accused and then pass a judicial order afresh below the police report keeping in mind the legal settled principle of law with regard to taking of cognizance in the matter.

(3) He is directed to follow the principles laid down in the case of M/s. India Carat Pvt. Ltd., V/s. State of Karnataka and another reported in AIR 1989 S.C. 885.

(4) The learned Magistrate to whom the aforesaid case would be assigned will pass necessary order below police report within one month from the date of receipt of writ of this Court.

In view of this, this Criminal Revision Application stands disposed of accordingly. Rule is made absolute to that extent. Office is directed to send the writ immediately to the Sessions Court.

(H.H. Mehta, J.)

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